

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEPHEN BARBEE, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">vs.</div> BRYAN COLLIER, et al, <div style="text-align: center;">Defendants.</div>	§ § § § § § § § § §	Civil Action No. 4:21-cv-03077
--	--	---

UNOPPOSED MOTION FOR COURT TO ENTER PRELIMINARY INJUNCTION

On November 16, 2022, the Fifth Circuit Court of Appeals vacated this Court’s preliminary injunction while giving guidance as to an appropriate injunction. *Barbee v. Collier*, No. 22-70012 (5th Cir.). The Court held that “a proper injunction would require Defendants to permit Barbee’s spiritual advisor to hold Barbee’s hand and to pray at a moderate volume loud enough for Barbee to hear during the execution.” *Barbee v. Collier* at *3 (Dennis, J., concurring). Another concurring opinion also noted that “the proper remedy is an injunction ordering the accommodation.” *Barbee v. Collier* at *4 (Elrod, J, concurring).

In accordance with that opinion, and the two concurrences that suggested that an injunction was proper, Plaintiff Stephen Barbee respectfully requests that this Court order the enclosed proposed preliminary injunction.

CERTIFICATE OF CONFERENCE

Undersigned counsel has consulted with counsel for Defendants, Mr. Stephen M. Hoffman,

who on November 16, 2022 indicated that he would not oppose this motion.

DATED: November 16, 2022.

Respectfully submitted,

s/s A. Richard Ellis

A. Richard Ellis

Texas Bar No. 06560400

75 Magee Avenue

Mill Valley, CA 94941

(415) 389-6771

FAX (415) 389-0251

a.r.ellis@att.net

Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEPHEN BARBEE,	§	
	§	
Plaintiff,	§	Civil Action
	§	No. 4:21-cv-03077
vs.	§	
	§	
BRYAN COLLIER, <i>et al</i> ,	§	
	§	
Defendants.	§	
	§	

PROPOSED PRELIMINARY INJUNCTION

In accordance with the Fifth Circuit Court of Appeals decision today, the following preliminary injunction is hereby entered:

A. Stephen Barbee’s spiritual advisor will be permitted to hold Barbee’s hand after Barbee is secured to the gurney in the execution chamber and the IV lines are in place.

B. Barbee’s spiritual advisor will be permitted to pray aloud at a moderate volume loud enough for Barbee to hear throughout the execution process, except that the spiritual advisor shall be silent any time the Warden or the CID Director speak during the process and when Barbee gives his last statement.

C. These accommodations will not be withdrawn so long as Barbee’s spiritual advisor does not create a disruption to the execution. Even if unanticipated events occur in the execution chamber, such as the need to inset the IV line in an alternate location, the religious accommodations will still be honored.

This order shall be communicated to the CID Director who will be present in the execution chamber at the time of Mr. Barbee’s execution.

It is so ordered.

Signed on November 16, 2022, at Houston, Texas

Kenneth M. Hoyt
United States District Judge

CERTIFICATE OF ELECTRONIC SERVICE

I, A. Richard Ellis, do hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern District of Texas, using the electronic case filing system of the Court on November 16, 2022.

/s/ A. Richard Ellis

A. RICHARD ELLIS

Attorney for Plaintiff Stephen Barbee

Texas Bar No. 06560400

75 Magee Avenue

Mill Valley, CA 94941

(415) 389-6771

FAX (415) 389-0251

a.r.ellis@att.net